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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/479,985	01/10/2000	Brian Feeney	P-5543	3773

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EXAMINER

WONG, STEVEN B

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 03/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/479,985

Applicant(s)
Feeney et al.

Examiner
Steven Wong

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3711



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Jan 9, 2002

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-22 is/are pending in the application.

4a) Of the above, claim(s) 17-21 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-16 and 22 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

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Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-8, 10-14, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. in view of "Manual for the Rubber Industry". Walker et al. disclose a basketball construction including a bladder (12), a layer of filaments (16) wound over the bladder and a cover (34) of polyurethane for the ball. However, Walker et al. lack the teaching for the cover to be formed from vulcanized urethane gum rubber.

"Manual for the Rubber Industry" reveals the manufacturing process for vulcanized urethane gum rubber and notes its advantages. Note page 175 which states that the vulcanized urethane gum rubber possesses "particularly good mechanical properties" and "wear resistance under many service conditions is better than that of other elastic materials". Thus, it would have been obvious to one of ordinary skill in the art to replace the polyurethane cover of Walker et al. with the vulcanized urethane gum rubber taught by "Manual for the Rubber Industry" in order to provide an improved cover with better mechanical properties and wear resistance.

Regarding claims 2-6 and 10, "Manual for the Rubber Industry" teaches the cross linking of the urethane with sulfur and the use of the other materials for forming the urethane.

Regarding claims 7 and 8, Walker et al. teach the use of a rubber carcass (20) as an inner layer.

Regarding claims 11-14 and 22, note the rejections of claims 1-8 and 10 above.

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3. Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. in view of "Manual for the Rubber Industry" and Schindler et al. The combination of Walker et al. in view of "Manual for the Rubber Industry" lacks the teaching for the inner layer to be foamed.

Schindler et al. reveal a basketball construction including a bladder (12), a layer of windings (14), an inner layer (16) of foamed rubber and a cover (18). It would have been obvious to one of ordinary skill in the art to replace the inner layer of Walker et al. with that of Schindler et al. for the reasons advanced by Schindler et al.

4. Claims 1-16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molitor et al. in view of "Manual for the Rubber Industry". Molitor et al. disclose an inflated game ball comprising a cover (12), an inner carcass (11) and a sponge layer (15). Note column 2, lines 31 and 32 of Molitor et al. which teach that the cover may be formed from rubber.

It would have been obvious to one of ordinary skill in the art to form the cover of Molitor et al. from the material of the "Manual for the Rubber Industry" in order to take advantage of that material's physical characteristics.

Regarding claims 9 and 15, Molitor et al. teach the use of a sponge layer.

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Response to Arguments

5. Applicant's arguments filed January 9, 2002 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation lies within the teachings of the "Manual for the Rubber Industry". The "Manual for the Rubber Industry" teaches advantages to their vulcanized urethane gum rubber which would be realized by one of ordinary skill in the art as being desirable for a game ball. Specifically, "Manual for the Rubber Industry" states that the gum rubber possesses "particularly good mechanical properties" and "wear resistance under many service conditions is better than that of other elastic materials". These advantages would clearly be recognized by one of ordinary skill in the art as being desirable for the outer cover of a game ball and thus, to form a game ball from the gum rubber taught by the "Manual for the Rubber Industry" would have been obvious.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in

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a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding the combination of Molitor et al. in view of the "Manual for the Rubber Industry", the motivation to combine the references again lies within the teachings of the "Manual for the Rubber Industry". The advantages as stated by the "Manual for the Rubber Industry" and reiterated above would also be desirable with the game ball as taught by Molitor et al. Further, as noted by applicant, Molitor et al. states that the cover may be made from any material known at the time such as rubber, leather or any other well known material (column 2, lines 31-33). Thus, it would have been obvious to one of ordinary skill in the art to form the cover of the ball of Molitor et al. from a vulcanized urethane gum rubber in order to take advantage of that material's physical characteristics as noted by the "Manual for the Rubber Industry".

Information Disclosure Statement

6. The applicant's citations of priority dates of July 1, 1993 and March 18, 1996 for the articles "Manual for the Rubber Industry" and "UREPAN-Specialty Elastomers with a Wide Range of Applications for the Rubber Industry", respectively, have been acknowledged. Also,

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applicant's statement that they are continuing to attempt to determine a more accurate priority dated for the "UREPAN" publication is noted.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is (703) 308-3135.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Official responses, subject to the provisions of 37 C.F.R. 1.6(d), can be faxed to (703) 305-3579.

Unofficial faxes which are meant for discussion purposes only should be sent to (703) 308-7768. It is strongly suggested that the examiner be contacted directly before sending any unofficial fax.


Steven Wong
Primary Examiner
Art Unit 3711

SBW
March 14, 2002